

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEROME DAVIS,	)	
	)	4:06cv3013
Plaintiff,	)	
	)	MEMORANDUM AND ORDER
vs.	)	(appeal)
	)	
MARK ASHFORD, Judge of Douglas	)	
County District Court,	)	
	)	
Defendant.	)	

This matter is before the court on filing no. 20, the Notice of Appeal filed by the plaintiff, Jerome Davis, a prisoner, and filing no. 21, the Memorandum from the Clerk of Court inquiring whether the plaintiff will be proceeding in forma pauperis ("IFP") on appeal. The plaintiff appeals filing nos. 17 and 18, the Memorandum and Order in which I dismissed his complaint, and the accompanying judgment. I dismissed the complaint for failure to prosecute this case after I denied the plaintiff's Motion to Proceed In Forma Pauperis pursuant to 28 U.S.C. § 1915A (screening prisoner complaints) and 28 U.S.C. § 1915(e)(2) (IFP standards) (see filing nos. 5, 9, 15, 16 and 17).

The Eighth Circuit Court of Appeals has stated that district courts should continue to certify pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a) whether an appeal by an appellant who wishes to proceed IFP on appeal is or is not taken in good faith. Henderson v. Norris, 129 F.3d 481, 485 (8<sup>th</sup> Cir. 1997). If the district court concludes that such an appeal is not taken in good faith, it shall, pursuant to Fed. R. App. P. 24(a), state in writing the reasons for the denial. Id.

Having considered the record in this action, I conclude that this appeal is not taken in good faith. The plaintiff has not stated a claim on which relief may be granted, and this appeal is frivolous.

If a district court determines that an appeal is not taken in good faith or that the individual is not otherwise entitled to pauper status, the Clerk of the district court must serve notice of the district court's decision on the parties and the Court of Appeals. Fed.

R. App. P. 24(a)(4). The appellant then has 30 days, following service of the Clerk's notice, to file a motion in the Court of Appeals for leave to proceed IFP on appeal. Fed. R. App. P. 24(a)(5). Such a motion in the Court of Appeals must be accompanied by a copy of the affidavit filed in the district court, or by a new affidavit if none was previously filed, and by a copy of the statement of reasons given by the district court for denial of IFP status on appeal. Id. If the Eighth Circuit grants the renewed IFP motion, the plaintiff would not be relieved of the \$455 appellate filing fee but would be permitted to pay the fee in installments.

THEREFORE, IT IS ORDERED:

1. That leave to proceed IFP on appeal is denied;
2. That the Clerk of Court shall send a copy of this Memorandum and Order to the parties and the Eighth Circuit Court of Appeals as the notice required by Fed. R. App. P. 24(a)(4), and the Clerk shall process the appeal to the Eighth Circuit; and
3. That the plaintiff may file a motion in the Court of Appeals for leave to proceed IFP on appeal.

August 10, 2006.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge